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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

DIANE RENTON et al.,
Plaintiffs and Appellants,
v.
MOSS & ENOCHIAN, a Law
Corporation et al.,
Defendants and Respondents.

A108140

(San Francisco County
Super. Ct. No. 319835)

Plaintiffs and appellants Diane Renton, Patricia Renton, and James Renton (the Rentons) appeal the judgment on a jury verdict in favor of defendants and respondents Moss & Enochian, a Law Corporation, Moss & Enochian, a Law Partnership, Jones, Clifford, McDevitt & Johnson, a Law Partnership, Jones, Clifford, McDevitt, Naekel & Johnson, a Law Partnership, and Yale Jones (collectively, respondents), in the Rentons' action for legal malpractice. They assert instructional and evidentiary error and abuse of discretion in bifurcating the issue of liability of the non-named defendant in the underlying case from the liability of the attorneys in the present case.

BACKGROUND

Underlying Action

On or about December 7, 1990, Norm Crombie, the director of maintenance and service manager of Pacific Flight Services, supervised the annual inspection of a used

single engine Piper airplane, PA-24-180, commonly known as a Piper Comanche. Crombie holds an aircraft and engine mechanic license and an inspecting authorization (IA) license from the Federal Aeronautics Administration; the latter license is necessary to sign off on major repairs and annual inspections. He was very familiar with the Piper 24 line of planes and had owned and restored a PA-24-180. As part of the inspection, which took between 18 and 20 hours, the fuel screens were checked and cleaned, the carburetor was drained, and the fuel lines were checked for leaks and security. By signing off on the annual inspection, Crombie was certifying it as airworthy.

On December 19, 1990, Richard Renton purchased the Piper Comanche that Crombie had inspected. As of January 29, 1991, Renton had logged 14 hours of flight time in the plane.

On January 30, 1991, Renton was flying his friend, Timothy Flynn, to Weed, Siskiyou County, in the Piper Comanche, where Flynn, a lawyer, had a court appearance. Flynn and Renton decided to land the plane in nearby Dunsmuir so Flynn could rent a car. The Dunsmuir airport is approximately 3,200 feet above sea level and is characterized as a high elevation mountain airport. As Renton came in for a landing at the Dunsmuir airport, he decided to make a “go-around,” aviation parlance for a pilot’s decision not to complete the landing he had begun but to try a different landing instead. However, Renton was unable to gain the necessary altitude, and the Piper Comanche crashed into the trees approximately one quarter mile from the end of the runway. He died six weeks later from injuries he sustained in the crash. Flynn was injured.

The crash was investigated by the National Transportation Safety Board (NTSB). Kenneth Weigand, owner of an aircraft recovery and salvage business, was called to recover the plane. After photographing the plane and its scattered pieces at the crash site, Weigand transported it to his hangar in Quincy, Plumas County, where he disassembled the parts and laid them out for the NTSB inspection. During the layout he photographed all parts of the plane of interest to the investigators. Following the February 5, 1991 investigation he boxed up the plane and stored it for several years. The plane’s whereabouts were unknown as of the instant 2004 trial.

Thomas Wilcox was an NTSB investigator at Weigand's hanger in Quincy. He did not participate in any investigation at the crash site in Dunsmuir. He was not in charge of the investigation but was assigned to train and direct Scott Erickson, a newly hired NTSB employee who was being prepared to be a solo investigator and who was the designated investigator in charge of this crash. When Wilcox arrived at the hanger, the fuselage and engine were sitting separately on a trailer. An inventory was taken of the accessories of the engine, and, under Wilcox's observation and direction, the engine was dismantled. Wilcox and Erickson examined each part and directed photographs to be taken of designated parts. Wilcox watched the photographs being taken, and in some cases was holding the part as it was photographed. The carburetor screen, fuel filter bowl, and fuel filter screen contained loose debris or contaminants; the parts were photographed to show the debris. Wilcox instructed Erickson to document all noteworthy matters. Wilcox contributed to the preparation of a summary of the engine breakdown; the summary was prepared by Charles Little. Pursuant to NTSB regulations, Wilcox was not permitted to give his opinion on the cause of the crash.

Following Renton's death, his widow, appellant Diane Renton, retained respondent law firm Moss & Enochian to investigate and prosecute appropriate civil claims on behalf of her and her then minor children, appellants Patricia and James Renton.

In January 1992 Moss & Enochian filed a wrongful death/product defect action against Piper Aircraft and 50 Does on behalf of the Rentons (the Piper lawsuit¹). On January 15, 1992, respondent law firm Jones, Clifford, McDevitt, Naekel, & Johnson, filed a workers' compensation claim on the Rentons' behalf (the workers' compensation action) following a referral from Moss & Enochian. Richard Renton carried liability insurance through AIG, and the two respondent law firms represented the Renton estate as defendant in passenger Flynn's action for his damages (the Flynn lawsuit). None of the three actions named Pacific Flight Services or mechanic Crombie as defendants.

¹ *Renton v. Piper Aircraft Corporation*, Shasta County Superior Court Action No. 109620.

In 1994, there was a global settlement of the Piper lawsuit, the Flynn lawsuit, and the Rentons' workers' compensation action. The workers' compensation case was resolved for a total payment to the Rentons of \$70,000, \$15,000 of which was contributed on behalf of Pacific Flight Services. Flynn received \$110,000 from AIG, the insurance carrier for Renton and for Pacific Flight Services. On April 13, 1994, Diane Renton, on behalf of herself and her children, executed a full and final release of all claims against Pacific Flight Services and Crombie.

Present Action

On March 22, 2001, the Rentons filed the present action for legal malpractice.² In causes of action for professional negligence and breach of fiduciary duty against all respondents, they alleged as to all parties: respondents failed to conduct a reasonable investigation of the airplane crash; failed to name all parties responsible for causing the crash; advised settlement for an amount far less than the reasonable value of the Rentons' claims and without explaining the ramifications of settlement; failed to advise on the applicable statutes of limitation; lacked sufficient skill and experience to prosecute the underlying action and failed to associate with attorneys who possessed such skill and experience; wrongly advised that the Rentons' personal assets were at risk from the Flynn lawsuit; represented multiple parties in the multiple underlying actions and failed to disclose their actual and potential conflict of interest; failed to advise Diane Renton that as of the settlement date the statute of limitations had expired as to her claims against parties who should have been named as defendants; and failed to advise that the statute had not expired as to James and Patricia's claims against those parties.

Specific to the Jones law firm defendants, the cause of action for breach of fiduciary duty alleged that these defendants advised the Rentons to settle the Piper lawsuit and workers' compensation action in an effort to place ahead of the Rentons' interests their own interest in obtaining money and concealing their own negligence.

Specific to the Moss & Enochian defendants, the cause of action for breach of fiduciary duty alleged that it failed to advise the Rentons that "it represented the city of

² Patricia and James Renton were adults by the time the present action was filed.

Dunsmuir,” a party that should have been named as a defendant in the Piper lawsuit, and AIG Insurance, the insurer for Pacific Flight Service and Norm Crombie, also parties that should have been named as defendants. Further, it alleged that it did so to conceal its conflict of interest from the Rentons.

The complaint also included causes of action for constructive fraud against respondents based on these factual allegations.

Trial

In pretrial proceedings the Rentons stipulated that, as plaintiffs in a legal malpractice action, they first had to prove the “case within a case,” which, in the present action, was the wrongful death case of Mr. Renton’s heirs for his death in the plane crash. They further stipulated that they were proceeding in the underlying action on a liability theory against Pacific Flight Services and mechanic Crombie. Respondents moved to bifurcate trial so that the underlying wrongful death action would be tried before the issue of their own liability. The court granted the motion to bifurcate and ordered the underlying action tried first.

By special verdict the jury found that Pacific Flight Services was not negligent.³ The court then granted respondents’ motion for nonsuit on the cause of action for breach of fiduciary duty and constructive fraud.

The Rentons’ motion for new trial on the same grounds they now assert as errors on appeal was denied.

DISCUSSION

I. Motion to Bifurcate

The Rentons contend the trial court abused its discretion in bifurcating the trial because bifurcation prevented them from presenting their case fully.

Code of Civil Procedure section 598 authorizes a court to order that the trial of any issue shall precede the trial of any other issue when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby. (See also Code Civ. Proc., § 1048, subd. (b): in furtherance of

³ The jury was not asked to determine whether Crombie was negligent.

convenience, expedition and economy, the court may order separate trial of separate issues; Evid. Code, § 320: court has discretion to regulate order of proof.) A bifurcation ruling is a matter within the trial court's discretion and will not be disturbed on appeal absent an abuse of discretion. (*Downey Savings & Loan Assn. v. Ohio Casualty Ins. Co.* (1987) 189 Cal.App.3d 1072, 1086.)

Pursuant to Code of Civil Procedure section 598, respondents moved to bifurcate trial into three phases: (1) the "case within a case" which would determine the cause of the 1991 airplane accident; (2) if necessary, their own breach of duty in conjunction with their handling of the airplane accident litigation; and, if necessary, (3) resulting damages. They argued that the gravamen of the Rentons' legal malpractice action was that parties against whom their wrongful death actions would have been meritorious were never named as defendants in that litigation. Therefore, respondents argued, as a matter of efficiency and logic, the underlying action against these non-named defendants should be tried first. If the non-named parties were not found negligent, there would be no need to pursue the second and third phases.

Respondents also argued that the risk of confusing the jury would be minimized if the evidence relevant to the claims of respondents' liability for legal malpractice was not presented at the same time as the evidence relevant to the underlying wrongful death action or relevant to damages resulting from legal negligence.

In their opposition to bifurcation, the Rentons asserted that respondents failed to investigate the cause of the airplane crash and failed to advise them of viable claims against Pacific Flight Services and mechanic Crombie, who had inspected the plane 14 flight hours before the crash. They argued that, had Crombie performed the requisite mandatory examination, he would have discovered sand and rust in the fuel bowl, fuel bowl screen, carburetor screen and fuel bowl, and electric fuel pumps, and their expert would testify that the plane lost power as Mr. Renton was making his go-around because of contamination in the fuel system and carburetor. They argued generally that, to demonstrate respondents' negligence in handling the underlying wrongful death action, "[p]laintiffs will show facts that relate to both the wrongful death action and the [legal]

malpractice action,” and that at least seven witnesses would testify on matters related to both the underlying liability of Pacific Flight Services and respondents’ professional negligence, and four witnesses would testify on matters related to both professional negligence and damages. Plaintiffs did not identify further what or how the evidence related to both the wrongful death action and the malpractice action were interwoven. Plaintiffs did identify by name witnesses needing to be called and recalled.

After oral argument on the motion, the court bifurcated trial so that the first phase would be “the cause within the cause liability,” the second phase would be “attorney malpractice issues,” and the third phase would be punitive damages.

We conclude there is no abuse of discretion in the court’s bifurcation order. The principal purpose of Code of Civil Procedure section 598 is to avoid the waste of time and money caused by the unnecessary trial of the issue of damages where the issue of liability is resolved against the plaintiff. (*Cohn v. Bugas* (1974) 42 Cal.App.3d 381, 385.) Bifurcation also serves to promote settlement where the plaintiff wins on the liability issue, and it affords a more logical presentation of evidence, thereby simplifying the issues for the jury. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 888, fn. 8.)

Here, the Rentons’ specific theory of the cause of the underlying wrongful death was that debris in the fuel system impeded the flow of fuel and caused a loss of power as Mr. Renton was beginning the “go-around,” and that mechanic Crombie’s improper inspection of the plane was a substantial factor in causing the plane to crash. Implicit in their theory is that, had Crombie inspected the plane properly, he would have noticed the debris and removed it or advised Renton to have it removed before any flights. Thus, before the Rentons could proceed with their theory that respondents were negligent for failing to bring Crombie and his employer, Pacific Flight, into the underlying wrongful death action as defendants, they first had to demonstrate that the trier of fact in that underlying action would have found that Crombie (and, under the respondeat superior doctrine, Pacific Flight) breached the standard of care for a mechanic inspecting a Piper Comanche airplane, and that the breach was a substantial factor in causing Mr. Renton’s death and the Rentons’ resulting damages.

Resolving this issue of Crombie and Pacific Flight's negligence first was an efficient and economical use of judicial resources. If the jury resolved this issue adversely to the Rentons, there would be no need to reach the issue of whether respondents were negligent for failing to litigate the underlying action against Crombie and Pacific Flight. Conversely, resolution of the issue in the Rentons' favor would enhance the potential for settlement. Furthermore, based on the information before the court, it could reasonably conclude that linear trials on the separate issues of the non-named defendants' liability in the underlying wrongful death action and respondents' liability in the legal malpractice action arguably allowed a more logical presentation of evidence and reduced potential jury confusion that might result from the concurrent presentation of evidence on discrete issues.

The Rentons now argue that as a result of the bifurcation they were denied proof sufficient to demonstrate causation. On appeal, they assert that, due to respondents' negligence in failing to obtain and preserve the physical evidence, they could not present evidence of their theory of causation--mechanic Crombie's failure to observe and/or remove debris in the fuel system--except via photographs taken of the plane and its parts during the investigation of the crash. Despite the fact that the engine and plane were available for inspection for several years, they argue respondents negligently failed to preserve the relevant engine parts. Because of the bifurcation they were unable to present physical proof of their theory--the actual fuel system component parts--and to explain to the jury why the negligent inspection caused the crash. The Rentons contend "the jury likely thought that the state of those parts would not support" their theory.

The Rentons' argument is unavailing. The Rentons did allege respondents failed to adequately investigate the accident. As liberally construed, an alleged failure to preserve critical evidence is encompassed in the complaint's allegation of failure to investigate. But appellant did not oppose the bifurcation motion on the grounds that evidence of respondents' failure to preserve critical evidence was necessary to explain why the physical parts of the plane were not presented at trial. They merely argued generally that "[t]o demonstrate Defendants' negligence in handling the underlying actions, Plaintiffs

will show facts that relate to both the underlying wrongful death action and the malpractice action.” Significantly, appellants made no proffer in opposition to bifurcation, nor do they cite on appeal, any proposed expert testimony on the nature and scope of a plaintiffs’ attorney’s reasonably adequate airplane accident investigation. They cannot now complain they were prejudiced because the underlying wrongful death case was bifurcated from, and tried before the issue of respondents’ professional negligence.

There was sufficient evidence from which the jury could conclude that the Rentons had failed to prove that debris in the fuel system was a substantial cause of the crash. The jury reached this conclusion despite testimony from witnesses who participated in the investigation of the crash for the NTSB that the engine was disassembled, the parts examined, and debris was found in parts of the fuel system. On the other hand, the Rentons did not present an expert mechanic to contradict Crombie’s testimony that he had inspected the plane properly. Respondents’ accident reconstruction expert testified that contaminants did not cause the engine to fail, that the fuel screens were designed to catch contaminants, and substantial blockage of the fuel screens and contaminants in the fuel system would still permit the plane to fly because of its large capacity to hold contamination. Both parties presented evidence of pilot error, such as Mr. Renton’s never having previously landed the Piper Comanche at a high altitude airport like Dunsmuir; landing with a tail wind instead of a head wind; leaving the carburetor heat on, which significantly decreases engine power, during the go-around; and attempting the go-around instead of landing, which he could have done, despite an approach “quite a ways” up the runway. In short, the bifurcation was not an abuse of discretion, and the Rentons cannot complain they were denied the opportunity to present fully their claim that the negligence of Pacific Flight Services and mechanic Crombie was a substantial factor causing the airplane crash.

II. Troy Bowman Testimony

The Rentons contend the court abused its discretion in limiting the testimony of their accident reconstruction expert, Troy Bowman. They recognize that a court has wide

discretion in ruling on the question of an expert's qualifications, and that its ruling will not be disturbed on appeal unless a manifest abuse of that discretion is shown. (*People v. Clark* (1993) 5 Cal.4th 950, 1018; *Jackson v. Deft, Inc.* (1990) 223 Cal.App.3d 1305, 1319-1320.)

Bowman was to testify, inter alia, as to the degradation of power to the Piper Comanche caused by contamination in the fuel system and as to the nature and source of that contamination. Before trial respondents moved to exclude all his testimony regarding microbial growth because he was not qualified to opine on microbial contamination in the plane's fuel supply; the test he used did not support his theory; his opinions relied on speculative factors and remote and conjectural tests; and his opinions were cumulative and duplicative to that of other expert witnesses of the Rentons. They based their motion on Bowman's deposition testimony.

a. Deposition

Bowman gave the following testimony during his deposition: Since 1992 he has worked as a consulting engineer for companies that engage in forensic engineering, and failure analysis of, inter alia, aircraft systems. Based on photographs of the component parts of the Piper Comanche, he opined there was contamination in its fuel strainers and carburetor float bowl. He observed a large quantity of debris in one strainer compared to the amount in other strainers. To determine what would create the large quantity of debris, he showed photographs of the fuel strainer to a petroleum company employee, Bill Whitehall, whose job is eradicating bacterial growth in fuel systems. After looking at the photographs, Whitehall commented that there was microbial growth in the fuel system. Whitehall then explained to Bowman the effect of microbial growth, the time necessary to generate such growth, and how it attacks a fuel system.

Bowman personally had no training in or experience dealing with microbial growth. His only experience was what he had learned from the instant case and what he had researched. He had not taken any training courses in microbial growth, and he was unaware of any available courses or studies on the subject. He did not know Whitehall's education or experience other than Whitehall's telling him that he had worked for

petroleum companies for 25-30 years in microbial growth eradication, which entailed testing systems for the presence of microbial growth and adding biocides.

Bowman obtained a sample of fuel he believed to be contaminated with microbial growth from the fuel tank of a Cessna 377 plane wing that had been in an airplane salvage yard for approximately eight years. He did not know whether the plane wing was in the salvage yard because the plane had crashed due to contamination in the fuel system. He had the fuel analyzed by a laboratory, which identified microbial growth.

Bowman opined that debris, which appeared to be corrosion, got into the Piper Comanche's carburetor float bowl, and that this debris, which passes easily through the mixture orifice into the bottom of the fuel discharge nozzle, obstructed the nozzle and reduced fuel flow. However, because the nozzle was never inspected, he did not know how much contamination broke off, or if it broke off, or if it was simply floating and got into the nozzle, or how much of the nozzle was obstructed, or how much the fuel flow was decreased. Asked whether it was true that no one knew how much the fuel flow decreased in gallons per hour, he replied: "Indirectly, I think we can come to some basic understanding [] of what it was," based on the flow test he had conducted.

b. Evidence Code section 402 hearing

The court conducted a hearing pursuant to Evidence Code section 402 to determine the admissibility of Bowman's testimony. During this hearing Bowman initially testified: he was a helicopter mechanic and technical inspector for the United States Army for 13 years, during which time he was exposed to various types of helicopters from a maintenance perspective. A technical inspector in the Army is the military equivalent to a civilian inspector who is an experienced mechanic with authority to "sign off" various types of inspections and major repair and modifications. During that time he saw microbial growth in helicopter fuel systems, although it was not common. He described microbial growth as occurring when bacteria from the outside environment, such as water, dirt, or air, infiltrates the fuel system. It starts as a small colony and grows to a larger colony that can obstruct various components within the fuel

system. It is more likely to occur in an aircraft that sits unused for an extended period of time with water in the fuel.

After Bowman left the Army he obtained a bachelor's degree in aerospace engineering; he took multiple chemistry courses while obtaining his degree, which helped with the understanding of microbial growth. He subsequently attended the University of Southern California school for accident reconstruction, in which his recollection was that, during discussions of fuel contamination, microbial growth was addressed. He worked for 10 years as an accident investigator for Aeroscope, Inc., where he was exposed to numerous types of contamination in fuel systems. During one inspection he observed microbial growth in the fuel system of a crop duster type airplane. His analysis of fuel system contamination includes the origin and cause of contamination in fuel systems.

Following this testimony, the court observed that the foundational fact at issue was whether there was any microbial growth in the fuel system. It further noted that it had read Bowman's deposition and had no sense that Bowman examined any component parts from the Piper Comanche that crashed, and that his opinion as to microbial growth was based on another person's (i.e., Bill Whitehall's) identification of such growth in a photograph, not on his own identification of growth from these photos. As the court stated, "Someone else tells him it's there and from that he develops his opinion. [] The problem I'm having right now is it appears to me that no one tested this sediment that was in the strainers. No one took these things apart. No one checked the fuel nozzle[s] to see if they were clogged. How can I let in testimony that's basically speculation at this point as to what was in the fuel line no one ever looked at?"

In response, Bowman testified that he never examined the actual fuel strainer, but when he looked at the photographs of it, he saw an extraordinary amount of deposit. He then "looked at a couple of different options as to what this debris likely was." It did not appear to be the tar-like substance that results when fuel sits in a bowl for an extended period of time. Rather, it was a black sulphury/powdery substance, which led him to believe that it was likely microbial growth in the system. He then showed the photographs to Bill Whitehall to have him verify Bowman's own assessment.

Bowman had seen contamination in fuel systems in other accident reconstruction cases, but this case was “probably the most profound” case he had seen. To determine what existed in a fuel system at the time of an accident, he looks at the material in the strainer bowl or in another part of the plane after the accident, and then has to “work his way back,” which was his method in the instant case, except that he had to rely on photographs taken of the component parts of the fuel system after the accident, because the actual parts were no longer available.

Bowman acknowledged that he was not an expert in microbial growth, and did not have a degree in biology or chemistry. He further acknowledged that Bill Whitehall’s experience with petroleum products far exceeded his own.

Bowman did not conduct any tests to determine if microbial growth was present in the fuel system of the Piper Comanche. He relied on photographs of the airplane after the crash to form his opinions. From the photograph of the inside of the carburetor he observed a large quantity of debris; it was a solid yellowish brown substance, possibly corrosion, and possibly the result of microbial growth. He stated that once a fuel system is contaminated with microbial growth, the growth “promulgates” through the entire fuel system, leading to a thin film that can obstruct the orifices of the system. This in turn can lead to a breakdown to sulfuric acid. A carburetor bowl is typically made of aluminum, which in combination with sulfuric acid produces aluminum sulfite, which was possibly the substance appearing in the photograph of the Piper Comanche carburetor bowl. In the absence of having the fuel system components and the debris tested, which was not possible because they were no longer available, he thought, by process of elimination, that it was more likely than not that there was microbial growth in the fuel system. Bowman performed his tests based on his examination of the photos showing debris at the bottom of the carburetor bowl and his approximation of the size of that debris.

c. Ruling

The court found that Bowman was not qualified to determine the chemical composition of the debris found in the plane, and “specifically whether microbial growth is the cause of the deposits in the strainer or on the carburetor, and whether aluminum

sulfite is a black substance as found in those deposits.” It also concluded that Bowman could not present opinion testimony regarding debris closing the fuel nozzles based on the fuel flow tests he performed on the fuel nozzle because there was no direct evidence as to whether the nozzles were actually blocked at the time of the accident and there was no evidence regarding the precise nature or size of the particulate matter in the carburetor bowl or the size of the particles.

d. Discussion

A person is qualified to testify as an expert if he has special knowledge, skill, experience or education sufficient to qualify him as an expert on the subject to which his testimony relates. Evid. Code, § 720, subd. (a).) We find no abuse in the court’s determination that Bowman was not qualified as an expert on the subject of microbial growth. Although he had some generalized knowledge of chemical compositions and breakdowns, he did not have a degree in biochemistry or similar subject, and he had not subsequently taken special courses or training in the subject. His on-the-job knowledge and experience with microbial growth was spotty: the very occasional encounter with microbial growth while working as an Army helicopter mechanic/inspector and one incident during his professional career involving a crop duster. He stated in his deposition that he was not an expert on the subject and that what he knew about microbial growth was learned in the instant case and “what [he’d] researched.”

The court could reasonably conclude Bowman was not sufficiently familiar with microbial growth in aircraft fuel systems to give an expert opinion as to its presence in or its effect on this Piper Comanche.

III. *Instructional Error*

Pursuant to Code of Federal Regulations, section 91.403(a), the court instructed: “Rules of the Federal Aviation Administration (FAA) provide that the owner or operator of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition.” The Rentons objected to this instruction because it was irrelevant to this case. As they argued, “[Mr.] Renton was employing the services of Pacific Flight [which] was a fixed based operator. That person, under the FAA regulations, has the obligation to

make certain that the plane is airworthy. The defendant in this case was Pacific Flight Services. And the evidence from the witnesses showed that [Mr.] Renton would not be allowed to work on the carburetor, would not be allowed to work on the filter [bowl] because FAA requirements do not allow an individual pilot to do that.”

In support of the instruction, respondents argued that the FAA guideline spoke for itself, to wit, the pilot had a nondelegable duty to maintain the plane in an airworthy condition. They further argued that the fact that Mr. Renton would not have been allowed to perform the mechanical work personally did not relieve him of the nondelegable duty, there was no testimony that an annual inspection relieved him of the duty, and the Piper Comanche’s operating handbook specified the plane owner’s responsibilities, one of which was maintenance of the fuel system.

The Rentons renew their contention on appeal that the instruction was improper because there was no evidence Mr. Renton failed in his legal duty to maintain the Piper Comanche. They further argue the error was prejudicial.

A court may instruct the jury in all matters of law it thinks necessary for the jury’s information in giving their verdict. (Code Civ. Proc., § 608.) A party is entitled to instructions on his theory of the case if reasonably supported by the pleadings and evidence. (*Conservatorship of Gregory* (2000) 80 Cal.App.4th 514, 522.)

As an affirmative defense to the second amended complaint respondents alleged that “other persons” were careless and/or negligent, and this carelessness and/or negligence proximately contributed to the accident referred to in the second amended complaint. At trial there was evidence that the Piper Comanche passed its annual inspection following a thorough inspection in December 1990. The inspection included checking and cleaning fuel screens, which involved removing the screens, removing any dirt or sand that was present on them, “backtracking” to determine where the dirt, if any, was coming from, draining the fuel lines and checking for water or foreign matter therein, and checking the carburetor for foreign matter.

The Piper Comanche handbook was admitted as an exhibit. It states that the fuel strainer should be drained regularly to check for water or dirt accumulations. The

preflight operating instructions therein state that before each flight, the pilot should determine that the fuel strainer and fuel lines are free of water and sediment by draining the fuel strainer once a day and should determine that the fuel tanks and carburetor bowls are free of water and sediment by draining them once a week.

The Rentons' expert, Bowman, testified that the pilot was responsible for ensuring the plane was maintained. He also confirmed the preflight requirements in the operator's handbook. He further testified that the pilot was responsible for assuring that the strainers and fuel lines were free of water and sediment because they can accumulate during operation and while the plane is sitting on the ground. Thus, there was evidence that Mr. Renton, once he took ownership of the plane on December 19, 1990, was responsible for assuring that the fuel lines, etc., were free of debris. There was also evidence that between his purchase and his fatal crash Mr. Renton had executed 40 take-offs and landings. Therefore, as Bowman testified, he would have expected Mr. Renton to have followed the owner's handbook preflight checklist before each flight. Insofar as it was undisputed that debris was found in the fuel system following the accident, there was evidence that, even if Pacific Flight mechanic Crombie had failed to observe and/or remove debris, Mr. Renton himself also failed to do so during his preflight inspections.

An applicable regulation is a factor the jury may consider in determining the reasonableness of the conduct in question, and can thus be the basis for an instruction when relevant. (*Conservatorship of Gregory, supra*, 80 Cal.App.4th at p. 523.) Given respondents' defense that the carelessness or negligence of "other persons" caused the accident, and the reasonable inference from the evidence that the debris in the fuel system was due, at least in part, to Mr. Renton's failure to adhere to the preflight directives to inspect the fuel system components regularly, the FAA regulation instruction was related to their theory of the case that Mr. Renton's conduct was a substantial factor in causing the accident. Because the instruction was warranted by the pleadings and the evidence, the trial court did not err in giving it.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Gemello, J.